



September 22, 2022

REGISTERED MAIL

Sheila Britton
Director
Homestead on the Hill Foundation
[REDACTED]

BN: 80930 9479 RR0001
File #: 3032109

Dear Sheila Britton:

Subject: Notice of intention to revoke

We are writing with respect to our letter dated May 14, 2019 (copy enclosed), in which Homestead on the Hill Foundation (the Foundation) was invited to respond to the findings of the audit conducted by the Canada Revenue Agency (CRA) for the period from November 1, 2015, to October 31, 2017. Specifically, the Foundation was asked to explain why its registration should not be revoked in accordance with subsection 168(1) of the Income Tax Act.

We have reviewed and considered your written responses dated June 13, 2019, and August 23, 2019. Your replies have not alleviated our concerns with respect to the Foundation's non-compliance with the requirements of the Act for registration as a charity. Our concerns are explained in Appendix A, attached.

Conclusion

The audit by the CRA found that the Foundation is not complying with the requirements set out in the Act. In particular, it was found that the Foundation failed to devote resources to a charitable activity carried on by the Foundation itself, provided an undue benefit to a person and failed to meet the disbursement quota.

For these reasons, it is our position that the Foundation no longer meets the requirements for charitable registration.

Consequently, for the reasons mentioned in our letter dated May 14, 2019, and pursuant to subsection 168(1) and 149.1(3) of the Act, we hereby notify you of our intention to revoke the registration of the Foundation. By virtue of subsection 168(2) of the Act, the revocation will be effective on the date of publication of the following notice in the Canada Gazette:

Notice is hereby given, pursuant to paragraph 168(1)(b), subsection 149.1(3), and paragraph 149.1(3)(b), of the Income Tax Act, of our intention to revoke the registration of the charity listed below and that by

virtue of paragraph 168(2)(b) thereof, the revocation of registration will be effective on the date of publication of this notice in the Canada Gazette.

Business number
809309479RR0001

Name
Homestead on the Hill Foundation
Vancouver BC

In addition, due to the serious nature of non-compliance found in the audit, the CRA has decided to publish a copy of the notice in the Canada Gazette immediately after the expiration of 30 days from the date of mailing of this notice pursuant to paragraph 168(2)(b) of the Act.

Should the Organization choose to object to this notice of intention to revoke its registration, in accordance with subsection 168(4) of the Act, a written notice of objection, with the reasons for objection and all relevant facts, must be filed within 90 days from the day this letter was mailed. The notice of objection should be sent to:

Assistant Commissioner
Appeals Intake Centre
Post Office Box 2006, Station Main
Newmarket ON L3Y 0E9

However, please note that even if the Organization files a notice of objection with the CRA, this will not prevent the CRA from publishing the notice of revocation in the Canada Gazette immediately after the expiration of 30 days from the date of mailing of this notice.

The Organization has the option of filing an application with the Federal Court of Appeal (FCA), as indicated in paragraph 168(2)(b) of the Act, to seek an order staying publication of the notice of revocation in the Canada Gazette. The FCA, upon reviewing this application, may extend the 30-day period during which the CRA cannot publish a copy of the notice.

A copy of the relevant provisions of the Act concerning revocation of registration, including appeals from a notice of intention to revoke registration, can be found in Appendix B, attached.

Consequences of revocation

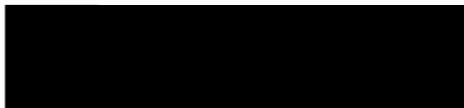
As of the effective date of revocation:

- a) the Foundation will no longer be exempt from Part I tax as a registered charity and **will no longer be permitted to issue official donation receipts**. This means that gifts made to the Foundation would not be allowable as tax credits to individual donors or as allowable deductions to corporate donors under subsection 118.1(3) and paragraph 110.1(1)(a) of the Act respectively;

- b) by virtue of section 188 of the Act, the Foundation will be required to pay a tax within one year from the date of the notice of intention to revoke. This revocation tax is calculated on Form T2046, Tax Return Where Registration of a Charity is Revoked. Form T2046 must be filed, and the tax paid, on or before the day that is one year from the date of the notice of intention to revoke. The relevant provisions of the Act concerning the tax applicable to revoked charities can also be found in Appendix B. Form T2046 and the related Guide RC4424, Completing the Tax Return Where Registration of a Charity is Revoked, are available on our website at canada.ca/charities-giving; and,
- c) the Foundation will no longer qualify as a charity for purposes of subsection 123(1) of the Excise Tax Act. As a result, the Foundation may be subject to obligations and entitlements under the Excise Tax Act that apply to entities other than charities. If you have any questions about your Goods and Services Tax/Harmonized Sales Tax (GST/HST) obligations and entitlements, please call GST/HST Rulings at 1-800-959-8287.

Finally, we advise that subsection 150(1) of the Act requires that every corporation (other than a corporation that was a registered charity throughout the year) file a return of income with the Minister in the prescribed form, containing prescribed information, for each taxation year. The return of income must be filed without notice or demand.

Yours sincerely,

A large black rectangular box used to redact a signature.

Sharmila Khare
Director General
Charities Directorate

Enclosures

- Appendix A, Comments on representations
- Appendix B, Relevant provisions of the Act
- CRA letter dated May 14, 2019

c.c.: Greg Sawers

ITR Appendix A
Homestead on the Hill Foundation
BN 809309479RR0001

Based on the Canada Revenue Agency's (CRA) audit of Homestead on the Hill Foundation (the Foundation) and all of the documentation presented to us, it remains our position that our audit findings demonstrate a number of serious contraventions of the Income Tax Act (the Act), of the common law applicable to registered charities, and that each of these contraventions constitutes grounds for revocation.

We have reviewed your representations dated June 13, 2019, submitted on your behalf by your representative, [REDACTED]

However, this reply has not alleviated our concerns. The audit conducted by the CRA for the period from November 1, 2015 to October 31, 2017, identified concerns that the Foundation was not operating in compliance with the provisions of the Act in the following areas:

1. Failed to devote resources to a charitable activity carried on by the Foundation itself
2. Provided an undue benefit to a person
3. Failed to meet the disbursement quota

As described in the balance of this appendix, and in our previous letter dated May 14, 2019, the Foundation has failed to remain compliant with, and is in serious breach of, the requirements for continued registration under the Act. As a result, its registration should be revoked.

1. Failure to Devote Resources to a Charitable Activity Carried on by the Foundation Itself

In your letter of June 13, 2019, you stated that "before moving to revocation...it would be reasonable to first review the Foundation's activity to date". As a result, we have included the activity in the 2018 fiscal period in our analysis of the Foundation's activities and provide our comments below.

a) Lack of gifting to qualified donees

In our letter of May 14, 2019, we identified our concern that the Foundation was not conducting activities in support of its registered charitable purpose of gifting to qualified donees. In your letter of June 13, 2019, the Foundation stated that in its 2018 fiscal period, it gifted \$9.5 million cash to qualified donees and this represented a devotion of resources in support of a charitable purpose. Documentation was further provided by the Foundation on August 23, 2019, to support this transaction. Our review of said documentation revealed that the purported gifts to qualified donees actually totalled \$3.7 million and not \$9.5 million as stated in your previous letter.

In an attempt to ensure administrative fairness, we reviewed this purported gift made by the Foundation to CHIMP: Charitable Impact Foundation (Canada) (CHIMP) in detail and evaluated the relationships between the Foundation, CHIMP, and the entities from which the Foundation received gifts. Our review indicates that a non-arm's length relationship exists between the Foundation, Mr. Blake Bromley, CHIMP, the Almoner Foundation (Almoner), and the Howe Sound's Samaritan Foundation (HSSF).

Mr. Bromley, either on his own authority [REDACTED] or as part of a controlling group, appointed during the audit period the boards of directors for the Foundation, HSSF, Almoner and CHIMP. As a result, for the years under audit, in the case of three out of the four organizations (all but CHIMP), the boards of directors were comprised of Mr. Bromley and/or employees of [REDACTED]

[REDACTED] Our review also revealed that the purported gift made to CHIMP, as outlined above, was made possible by a gift made to the Foundation by Fortius². The purported gift to CHIMP did not stay in CHIMP's control but rather was returned to Fortius, and as such, these funds only passed through the Foundation briefly. Based on this information, we conclude that CHIMP was not acting at arm's length with the Foundation but, along with the Foundation, was accommodating Fortius when it participated in these transactions. We are also of the opinion that the gift made by the Foundation to CHIMP for the 2018 fiscal period was not a gift made to a qualified donee in support of its charitable activities but was rather a series of predetermined transactions used to artificially inflate tax benefits for certain corporations and/or individuals and to allow other charitable entities to falsely meet its disbursement quota so that they may avoid revocation.

We would like to reiterate that making gifts to qualified donees is the Foundation's only stated purpose. As outlined above, our findings indicate that the Foundation has failed to disburse any significant amounts to qualified donees during the audit period, and that the purported gift made in the 2018 fiscal period was not in compliance with the Act. Therefore, it remains our position that the Foundation has failed to make gifts to qualified donees or expend amounts on charitable activities in support of its registered purposes and is in contravention of paragraph 149.1(3)(b.1) of the Act. As such, there are sufficient grounds to revoke the registration of the Foundation under paragraph 168(1)(b) of the Act.

b) Administrative expenses/legal fees

As described in our letter dated May 14, 2019, the Foundation has failed to demonstrate how it has devoted its resources to a charitable purpose. Specifically, the audit determined that the Foundation's only material expenditure in the audit period was for legal costs that were determined to be unrelated to the administration, charitable purpose, or the benefit of the Foundation. In your letter of June 13, 2019, the Foundation stated that these legal fees are not material in comparison to the total assets held by the Foundation. We respectfully disagree and maintain that the reported legal fees are a relevant consideration. They remain as the only significant expenditure in the audit period and must be considered when evaluating the total resources of the Foundation and how they were used. In order to maintain its registration as a charity, the Foundation must devote all of its resources to charitable activities.

Based on the information and explanations provided during our audit, we remain of the view that the legal fees are neither charitable nor reasonable, and have not been laid out for the administration of the Foundation.

It is our position that the Foundation has made outlays (in the form of legal fees) that are neither a gift to a qualified donee, nor a cost laid out in a charitable activity. As such, the Foundation has

² "Fortius" represents a conglomerate known as [REDACTED] which is made up of two organizations: [REDACTED] and the Fortius Foundation.

failed to make gifts to qualified donees or expend amounts on charitable activities in support of its registered purposes and is in contravention of subsection 149.1(3)(b.1) of the Act. We believe there are sufficient grounds to revoke the registration of the Foundation under paragraph 168(1)(b) of the Act.

2. Providing an undue benefit to a person

The Foundation's letter of June 13, 2019, stated that the legal fees in question were an administrative expense to enhance the Foundation's financial capacity and ability to carry out its charitable purposes of making gifts to qualified donees. In its view, the intent of the proposal for which the legal fees were paid was to increase the value and cash flow of the Archon shares to the Foundation. The Foundation has cash flow considerations that do not apply to the other shareholders of Archon due to its disbursement quota requirements as a public foundation. The Foundation further stated that it holds enough Archon shares to benefit significantly economically from the proposal, which would increase the value of the shares.

While the Foundation may have unique cash flow considerations relative to other Archon shareholders, it still remains a minor (4%³) shareholder. We do not agree with your statement "the Foundation was a significant shareholder and would have been the real beneficiary". Based on our review of the publically available information regarding Archon, the Foundation is a minor shareholder and not the primary beneficiary. It is unclear how the Foundation made a reasoned and logical business decision regarding the contracting and payment of these legal costs. There was insufficient supporting documentation provided both during the audit and in your representations which outlined the details of the proposal, provided an explanation of how the Foundation identified and measured the costs and potential benefits of the proposal, or outlined how the Foundation evaluated the reasonableness of the fees charged. Further, we have seen no indication that the Foundation was negotiating any unique advantages for itself, compared to all other shareholders; in fact, there were documents that indicated the contrary. As per the fax of April 20, 2019, the proposal's intent was to benefit all shareholders of Archon. Therefore we conclude that these legal fees are neither charitable, nor reasonable, and have not been laid out for the administration of the Foundation. As a non-charitable expenditure, this disbursement is considered a gift to a non-qualified donee.

As a public foundation, the Foundation must meet the definition contained in subsection 149.1(1) of the Act, which reads in part:

"....a corporation or trust that is constituted and operated exclusively for charitable purposes..."

We have found that the Foundation did not operate for its stated charitable purposes, as contemplated by the Act. Instead, the Foundation failed to distribute funds it received from non-arm's length entities, and made outlays that are neither a gift to a qualified donee, or a cost laid out in a charitable activity.

As such, the Foundation has failed to make gifts to qualified donees or expend amounts on charitable activities in support of its registered purposes and is in contravention of subsection

³ The Organization owns 2,400,000 shares out of a total of 53,916,758 issued and fully paid shares, or 4%.

149.1(3)(b.1) of the Act. We believe there are sufficient grounds to revoke the registration of the Foundation under paragraph 168(1)(b) of the Act.

3. Failure to meet the disbursement quota

In your letter dated June 13, 2019, your representative stated that, as was reported on the 2018 T3010 filed with CRA, the Foundation had made a gift to CHIMP for \$3.7 million. Your representative argues that this amount should be considered as a qualifying gift to a qualified donee, and therefore, the Foundation would alleviate their disbursement quota shortfall identified during our audit after carrying this excess amount back to a previous year. It is important to note that the 2018 return was received by the CRA on May 14, 2019, which was after our audit interview when the auditor expressed her concerns with the disbursement quota to the Foundation.

The disbursement quota is the minimum amount that a registered charity is required to spend each year on its charitable activities, or on gifts to qualified donees (for example, other registered charities). The disbursement quota calculation is based on the value of an organization's property not used for charitable activities or administration. A registered charity can draw on disbursement excesses from the five previous fiscal periods to help it meet a shortfall. If no excesses are available to draw on, the charity can try to spend enough the following year to create an excess that it can carry-back to cover the shortfall.

The requirement for the Foundation to meet a disbursement quota is described in subsection 149.1(3)(b) of the Act and is operative for each and every taxation year. Per subsection 149.1(20), if an organization has a disbursement quota excess it may carry it back to the immediately preceding taxation year. In the case of the Foundation's 2018 fiscal period, if it did have a disbursement excess, it could only be carried back to 2017. Therefore, a disbursement quota shortfall in 2016 would remain.

However, as we have noted earlier in this appendix, it is the CRA's position that the \$3.7 million which was paid by the Foundation to CHIMP is not considered a qualifying gift to a qualified donee for disbursement quota purposes as it was not made at arm's length. We are of the opinion that it is not a true gift, but part of a series of predetermined transactions used to artificially inflate tax benefits for certain corporations and/or individuals and to allow other charitable entities to falsely meet their disbursement quota so that they may avoid revocation. As such, the amount is not eligible to be carried back to a previous period to alleviate the Foundation's cumulative disbursement shortfall of \$2.9 million.

As a result, it remains our position that the Foundation has failed to comply with the disbursement quota requirements contained in the Act. Pursuant to subsection 149.1(3)(b) this is cause for the Foundation to be revoked in the manner described in paragraph 168(1) of the Act.

Conclusion

As explained above, the documents submitted by the Foundation on June 13, 2019, and August 23, 2019, failed to adequately address all of the issues raised and identified in our letter of May 14, 2019. The Foundation has not provided documentation or materials in support of all of its positions, and the information that we have received has not alleviated our concerns

regarding the Foundation's charitable status. Due to the serious nature of our concerns with the Foundation's activities, we cannot agree with your June 13, 2019, letter that "your concerns can all be addressed by an education letter or compliance agreement."

For the reasons outlined in our letter of May 14, 2019, and above, it is the CRA's position that the Foundation has failed to meet the requirements for registration as a public foundation as outlined in subsection 149.1(3) of the Act and therefore should have its charitable status revoked pursuant to 168(1) of the Act.

Qualified Donees

149.1 (1) Definitions

charitable foundation means a corporation or trust that is constituted and operated exclusively for charitable purposes, no part of the income of which is payable to, or is otherwise available for, the personal benefit of any proprietor, member, shareholder, trustee or settlor thereof, and that is not a charitable organization

charitable organization, at any particular time, means an organization, whether or not incorporated,

(a) constituted and operated exclusively for charitable purposes,

(a.1) all the resources of which are devoted to charitable activities carried on by the organization itself,

(b) no part of the income of which is payable to, or is otherwise available for, the personal benefit of any proprietor, member, shareholder, trustee or settlor thereof,

(c) more than 50% of the directors, trustees, officers or like officials of which deal at arm's length with each other and with

(i) each of the other directors, trustees, officers and like officials of the organization,

(ii) each person described by subparagraph (d)(i) or (ii), and

(iii) each member of a group of persons (other than Her Majesty in right of Canada or of a province, a municipality, another registered charity that is not a private foundation, and any club, society or association described in paragraph 149(1)(l)) who do not deal with each other at arm's length, if the group would, if it were a person, be a person described by subparagraph (d)(i), and

(d) that is not, at the particular time, and would not at the particular time be, if the organization were a corporation, controlled directly or indirectly in any manner whatever

(i) by a person (other than Her Majesty in right of Canada or of a province, a municipality, another registered charity that is not a private foundation, and any club, society or association described in paragraph 149(1)(l)),

(A) who immediately after the particular time, has contributed to the organization amounts that are, in total, greater than 50% of the capital of the organization immediately after the particular time, and

(B) who immediately after the person's last contribution at or before the particular time, had contributed to the organization amounts that were, in total, greater than 50% of the capital of the organization immediately after the making of that last contribution, or

(ii) by a person, or by a group of persons that do not deal at arm's length with each other, if the person or any member of the group does not deal at arm's length with a person described in subparagraph (i)

qualified donee, at any time, means a person that is

- (a) registered by the Minister and that is
 - (i) a housing corporation resident in Canada and exempt from tax under this Part because of paragraph 149(1)(i) that has applied for registration,
 - (ii) a municipality in Canada,
 - (iii) a municipal or public body performing a function of government in Canada that has applied for registration,
 - (iv) a university outside Canada, the student body of which ordinarily includes students from Canada, that has applied for registration, or
 - (v) a foreign charity that has applied to the Minister for registration under subsection (26),
- (b) a registered charity,
- (b.1) a registered journalism organization,
- (c) a registered Canadian amateur athletic association, or
- (d) Her Majesty in right of Canada or a province, the United Nations or an agency of the United Nations.

149.1 (2) Revocation of registration of charitable organization

The Minister may, in the manner described in section 168, revoke the registration of a charitable organization for any reason described in subsection 168(1) or where the organization

- (a) carries on a business that is not a related business of that charity;
- (b) fails to expend in any taxation year, on charitable activities carried on by it and by way of gifts made by it to qualified donees, amounts the total of which is at least equal to the organization's disbursement quota for that year; or
- (c) makes a disbursement by way of a gift, other than a gift made
 - (i) in the course of charitable activities carried on by it, or
 - (ii) to a donee that is a qualified donee at the time of the gift.

149.1 (3) Revocation of registration of public foundation

The Minister may, in the manner described in section 168, revoke the registration of a public foundation for any reason described in subsection 168(1) or where the foundation

- (a) carries on a business that is not a related business of that charity;

- (b) fails to expend in any taxation year, on charitable activities carried on by it and by way of gifts made by it to qualified donees, amounts the total of which is at least equal to the foundation's disbursement quota for that year;
- (b.1) makes a disbursement by way of a gift, other than a gift made
 - (i) in the course of charitable activities carried on by it, or
 - (ii) to a donee that is a qualified donee at the time of the gift;
- (c) since June 1, 1950, acquired control of any corporation;
- (d) since June 1, 1950, incurred debts, other than debts for current operating expenses, debts incurred in connection with the purchase and sale of investments and debts incurred in the course of administering charitable activities; or
- (e) at any time within the 24 month period preceding the day on which notice is given to the foundation by the Minister pursuant to subsection 168(1) and at a time when the foundation was a private foundation, took any action or failed to expend amounts such that the Minister was entitled, pursuant to subsection 149.1(4), to revoke its registration as a private foundation.

149.1 (4) Revocation of registration of private foundation

The Minister may, in the manner described in section 168, revoke the registration of a private foundation for any reason described in subsection 168(1) or where the foundation

- (a) carries on any business;
- (b) fails to expend in any taxation year, on charitable activities carried on by it and by way of gifts made by it to qualified donees, amounts the total of which is at least equal to the foundation's disbursement quota for that year;
- (b.1) makes a disbursement by way of a gift, other than a gift made
 - (i) in the course of charitable activities carried on by it, or
 - (ii) to a donee that is a qualified donee at the time of the gift;
- (c) has, in respect of a class of shares of the capital stock of a corporation, a divestment obligation percentage at the end of any taxation year;
- (d) since June 1, 1950, incurred debts, other than debts for current operating expenses, debts incurred in connection with the purchase and sale of investments and debts incurred in the course of administering charitable activities.

149.1 (4.1) Revocation of registration of registered charity

The Minister may, in the manner described in section 168, revoke the registration

- (a) of a registered charity, if it has entered into a transaction (including a gift to another registered charity) and it may reasonably be considered that a purpose of the transaction was to avoid or unduly delay the expenditure of amounts on charitable activities;
- (b) of a registered charity, if it may reasonably be considered that a purpose of entering into a transaction (including the acceptance of a gift) with another registered charity to which

paragraph (a) applies was to assist the other registered charity in avoiding or unduly delaying the expenditure of amounts on charitable activities;

(c) of a registered charity, if a false statement, within the meaning assigned by subsection 163.2(1), was made in circumstances amounting to culpable conduct, within the meaning assigned by that subsection, in the furnishing of information for the purpose of obtaining registration of the charity;

(d) of a registered charity, if it has in a taxation year received a gift of property (other than a designated gift) from another registered charity with which it does not deal at arm's length and it has expended, before the end of the next taxation year, in addition to its disbursement quota for each of those taxation years, an amount that is less than the fair market value of the property, on charitable activities carried on by it or by way of gifts made to qualified donees with which it deals at arm's length;

(e) of a registered charity, if an ineligible individual is a director, trustee, officer or like official of the charity, or controls or manages the charity, directly or indirectly, in any manner whatever; and

(f) of a registered charity, if it accepts a gift from a foreign state, as defined in section 2 of the State Immunity Act, that is set out on the list referred to in subsection 6.1(2) of that Act.

Revocation of Registration of Certain Organizations and Associations

168 (1) Notice of intention to revoke registration

The Minister may, by registered mail, give notice to a person described in any of paragraphs (a) to (c) of the definition "qualified donee" in subsection 149.1(1) that the Minister proposes to revoke its registration if the person

(a) applies to the Minister in writing for revocation of its registration;

(b) ceases to comply with the requirements of this Act for its registration;

(c) in the case of a registered charity or registered Canadian amateur athletic association, fails to file an information return as and when required under this Act or a regulation;

(d) issues a receipt for a gift otherwise than in accordance with this Act and the regulations or that contains false information;

(e) fails to comply with or contravenes any of sections 230 to 231.5; or

(f) in the case of a registered Canadian amateur athletic association, accepts a gift the granting of which was expressly or implicitly conditional on the association making a gift to another person, club, society or association.

168 (2) Revocation of Registration

Where the Minister gives notice under subsection 168(1) to a registered charity or to a registered Canadian amateur athletic association,

(a) if the charity or association has applied to the Minister in writing for the revocation of its registration, the Minister shall, forthwith after the mailing of the notice, publish a copy of the notice in the Canada Gazette, and

(b) in any other case, the Minister may, after the expiration of 30 days from the day of mailing of the notice, or after the expiration of such extended period from the day of mailing of the notice as the Federal Court of Appeal or a judge of that Court, on application made at any time before the determination of any appeal pursuant to subsection 172(3) from the giving of the notice, may fix or allow, publish a copy of the notice in the Canada Gazette,

and on that publication of a copy of the notice, the registration of the charity or association is revoked.

168 (4) Objection to proposal or designation

A person may, on or before the day that is 90 days after the day on which the notice was mailed, serve on the Minister a written notice of objection in the manner authorized by the Minister, setting out the reasons for the objection and all the relevant facts, and the provisions of subsections 165(1), (1.1) and (3) to (7) and sections 166, 166.1 and 166.2 apply, with any modifications that the circumstances require, as if the notice were a notice of assessment made under section 152, if

(a) in the case of a person that is or was registered as a registered charity or is an applicant for such registration, it objects to a notice under any of subsections (1) and 149.1(2) to (4.1), (6.3), (22) and (23);

(b) in the case of a person that is or was registered as a registered Canadian amateur athletic association or is an applicant for such registration, it objects to a notice under any of subsections (1) and 149.1(4.2) and (22); or

(c) in the case of a person described in any of subparagraphs (a)(i) to (v) of the definition "qualified donee" in subsection 149.1(1), that is or was registered by the Minister as a qualified donee or is an applicant for such registration, it objects to a notice under any of subsections (1) and 149.1(4.3) and (22).

172 (3) Appeal from refusal to register, revocation of registration, etc.

Where the Minister

(a) confirms a proposal or decision in respect of which a notice was issued under any of subsections 149.1(4.2) and (22) and 168(1) by the Minister, to a person that is or was registered as a registered Canadian amateur athletic association or is an applicant for registration as a registered Canadian amateur athletic association, or does not confirm or vacate that proposal or decision within 90 days after service of a notice of objection by the person under subsection 168(4) in respect of that proposal or decision,

(a.1) confirms a proposal, decision or designation in respect of which a notice was issued by the Minister to a person that is or was registered as a registered charity, or is an applicant for registration as a registered charity, under any of subsections 149.1(2) to (4.1), (6.3), (22) and (23) and 168(1), or does not confirm or vacate that proposal, decision or designation within 90

days after service of a notice of objection by the person under subsection 168(4) in respect of that proposal, decision or designation,

(a.2) confirms a proposal or decision in respect of which a notice was issued under any of subsections 149.1(4.3), (22) and 168(1) by the Minister, to a person that is a person described in any of subparagraphs (a)(i) to (v) of the definition "qualified donee" in subsection 149.1(1) that is or was registered by the Minister as a qualified donee or is an applicant for such registration, or does not confirm or vacate that proposal or decision within 90 days after service of a notice of objection by the person under subsection 168(4) in respect of that proposal or decision,

(b) refuses to accept for registration for the purposes of this Act any retirement savings plan,

(c) refuses to accept for registration for the purposes of this Act any profit sharing plan or revokes the registration of such a plan,

(d) [Repealed, 2011, c. 24, s. 54]

(e) refuses to accept for registration for the purposes of this Act an education savings plan,

(e.1) sends notice under subsection 146.1(12.1) to a promoter that the Minister proposes to revoke the registration of an education savings plan,

(f) refuses to register for the purposes of this Act any pension plan or gives notice under subsection 147.1(11) to the administrator of a registered pension plan that the Minister proposes to revoke its registration,

(f.1) refuses to accept an amendment to a registered pension plan,

(g) refuses to accept for registration for the purposes of this Act any retirement income fund,

(h) refuses to accept for registration for the purposes of this Act any pooled pension plan or gives notice under subsection 147.5(24) to the administrator of a pooled registered pension plan that the Minister proposes to revoke its registration, or

(i) refuses to accept an amendment to a pooled registered pension plan,

the person described in paragraph (a), (a.1) or (a.2), the applicant in a case described in paragraph (b), (e) or (g), a trustee under the plan or an employer of employees who are beneficiaries under the plan, in a case described in paragraph (c), the promoter in a case described in paragraph (e.1), the administrator of the plan or an employer who participates in the plan, in a case described in paragraph (f) or (f.1), or the administrator of the plan in a case described in paragraph (h) or (i), may appeal from the Minister's decision, or from the giving of the notice by the Minister, to the Federal Court of Appeal.

180 (1) Appeals to Federal Court of Appeal

An appeal to the Federal Court of Appeal pursuant to subsection 172(3) may be instituted by filing a notice of appeal in the Court within 30 days from

(a) the day on which the Minister notifies a person under subsection 165(3) of the Minister's action in respect of a notice of objection filed under subsection 168(4),

(b) [Repealed, 2011, c. 24, s. 55]

(c) the mailing of notice to the administrator of the registered pension plan under subsection 147.1(11),

(c.1) the sending of a notice to a promoter of a registered education savings plan under subsection 146.1(12.1),

(c.2) the mailing of notice to the administrator of the pooled registered pension plan under subsection 147.5(24), or

(d) the time the decision of the Minister to refuse the application for acceptance of the amendment to the registered pension plan or pooled registered pension plan was mailed, or otherwise communicated in writing, by the Minister to any person,

as the case may be, or within such further time as the Court of Appeal or a judge thereof may, either before or after the expiration of those 30 days, fix or allow.

Tax and Penalties in Respect of Qualified Donees

188 (1) Deemed year-end on notice of revocation

If on a particular day the Minister issues a notice of intention to revoke the registration of a taxpayer as a registered charity under any of subsections 149.1(2) to (4.1) and 168(1) or it is determined, under subsection 7(1) of the Charities Registration (Security Information) Act, that a certificate served in respect of the charity under subsection 5(1) of that Act is reasonable on the basis of information and evidence available,

(a) the taxation year of the charity that would otherwise have included that day is deemed to end at the end of that day;

(b) a new taxation year of the charity is deemed to begin immediately after that day; and

(c) for the purpose of determining the charity's fiscal period after that day, the charity is deemed not to have established a fiscal period before that day.

188 (1.1) Revocation tax

A charity referred to in subsection (1) is liable to a tax, for its taxation year that is deemed to have ended, equal to the amount determined by the formula

A - B

where

A is the total of all amounts, each of which is

(a) the fair market value of a property of the charity at the end of that taxation year,

(b) the amount of an appropriation (within the meaning assigned by subsection (2)) in respect of a property transferred to another person in the 120-day period that ended at the end of that taxation year, or

(c) the income of the charity for its winding-up period, including gifts received by the charity in that period from any source and any income that would be computed under section 3 as if that period were a taxation year; and

~~B is the total of all amounts (other than the amount of an expenditure in respect of which a deduction has been made in computing income for the winding-up period under paragraph (c) of the description of A), each of which is~~

- (a) a debt of the charity that is outstanding at the end of that taxation year,
- (b) an expenditure made by the charity during the winding-up period on charitable activities carried on by it, or
- (c) an amount in respect of a property transferred by the charity during the winding-up period and not later than the latter of one year from the end of the taxation year and the day, if any, referred to in paragraph (1.2)(c), to a person that was at the time of the transfer an eligible donee in respect of the charity, equal to the amount, if any, by which the fair market value of the property, when transferred, exceeds the consideration given by the person for the transfer.

188 (1.2) Winding-up period

In this Part, the winding-up period of a charity is the period that begins immediately after the day on which the Minister issues a notice of intention to revoke the registration of a taxpayer as a registered charity under any of subsections 149.1(2) to (4.1) and 168(1) (or, if earlier, immediately after the day on which it is determined, under subsection 7(1) of the Charities Registration (Security Information) Act, that a certificate served in respect of the charity under subsection 5(1) of that Act is reasonable on the basis of information and evidence available), and that ends on the day that is the latest of

- (a) the day, if any, on which the charity files a return under subsection 189(6.1) for the taxation year deemed by subsection (1) to have ended, but not later than the day on which the charity is required to file that return,
- (b) the day on which the Minister last issues a notice of assessment of tax payable under subsection (1.1) for that taxation year by the charity, and
- (c) if the charity has filed a notice of objection or appeal in respect of that assessment, the day on which the Minister may take a collection action under section 225.1 in respect of that tax payable.

188 (1.3) Eligible donee

In this Part, an eligible donee in respect of a particular charity is

- (a) a registered charity
 - (i) of which more than 50% of the members of the board of directors or trustees of the registered charity deal at arm's length with each member of the board of directors or trustees of the particular charity,

- (ii) that is not the subject of a suspension under subsection 188.2(1),
- (iii) that has no unpaid liabilities under this Act or under the Excise Tax Act,
- (iv) that has filed all information returns required by subsection 149.1(14), and
- (v) that is not the subject of a certificate under subsection 5(1) of the Charities Registration (Security Information) Act or, if it is the subject of such a certificate, the certificate has been determined under subsection 7(1) of that Act not to be reasonable; or

(b) a municipality in Canada that is approved by the Minister in respect of a transfer of property from the particular charity.

188 (2) Shared liability – revocation tax

A person who, after the time that is 120 days before the end of the taxation year of a charity that is deemed by subsection (1) to have ended, receives property from the charity, is jointly and severally, or solidarily, liable with the charity for the tax payable under subsection (1.1) by the charity for that taxation year for an amount not exceeding the total of all appropriations, each of which is the amount by which the fair market value of such a property at the time it was so received by the person exceeds the consideration given by the person in respect of the property.

188 (2.1) Non-application of revocation tax

Subsections (1) and (1.1) do not apply to a charity in respect of a notice of intention to revoke given under any of subsections 149.1(2) to (4.1) and 168(1) if the Minister abandons the intention and so notifies the charity or if

- (a) within the one-year period that begins immediately after the taxation year of the charity otherwise deemed by subsection (1) to have ended, the Minister has registered the charity as a charitable organization, private foundation or public foundation; and
- (b) the charity has, before the time that the Minister has so registered the charity,
 - (i) paid all amounts, each of which is an amount for which the charity is liable under this Act (other than subsection (1.1)) or the Excise Tax Act in respect of taxes, penalties and interest, and
 - (ii) filed all information returns required by or under this Act to be filed on or before that time.

188 (3) Transfer of property tax

Where, as a result of a transaction or series of transactions, property owned by a registered charity that is a charitable foundation and having a net value greater than 50% of the net asset amount of the charitable foundation immediately before the transaction or series of transactions, as the case may be, is transferred before the end of a taxation year, directly or indirectly, to one or more charitable organizations and it may reasonably be considered that the main purpose of the transfer is to effect a reduction in the disbursement quota of the foundation, the foundation shall pay a tax under this Part for the year equal to the amount by which 25% of the net value of that property determined as of the day of its transfer exceeds the total of all amounts each of

which is its tax payable under this subsection for a preceding taxation year in respect of the transaction or series of transactions.

188 (3.1) Non-application of subsection (3)

Subsection (3) does not apply to a transfer that is a gift to which subsection 188.1(11) or (12) applies.

188 (4) Joint and several, or solidary, liability – tax transfer

If property has been transferred to a charitable organization in circumstances described in subsection (3) and it may reasonably be considered that the organization acted in concert with a charitable foundation for the purpose of reducing the disbursement quota of the foundation, the organization is jointly and severally, or solidarily, liable with the foundation for the tax imposed on the foundation by that subsection in an amount not exceeding the net value of the property.

188 (5) Definitions – In this section,

net asset amount of a charitable foundation at any time means the amount determined by the formula

$$\mathbf{A - B}$$

where

A is the fair market value at that time of all the property owned by the foundation at that time, and

B is the total of all amounts each of which is the amount of a debt owing by or any other obligation of the foundation at that time;

net value of property owned by a charitable foundation, as of the day of its transfer, means the amount determined by the formula

$$\mathbf{A - B}$$

where

A is the fair market value of the property on that day, and

B is the amount of any consideration given to the foundation for the transfer.

189 (6) Taxpayer to file return and pay tax

Every taxpayer who is liable to pay tax under this Part (except a charity that is liable to pay tax under section 188(1)) for a taxation year shall, on or before the day on or before which the taxpayer is, or would be if tax were payable by the taxpayer under Part I for the year, required to file a return of income or an information return under Part I for the year,

- (a) file with the Minister a return for the year in prescribed form and containing prescribed information, without notice or demand therefor;
- (b) estimate in the return the amount of tax payable by the taxpayer under this Part for the year; and
- (c) pay to the Receiver General the amount of tax payable by the taxpayer under this Part for the year.

189 (6.1) Revoked charity to file returns

Every taxpayer who is liable to pay tax under subsection 188(1.1) for a taxation year shall, on or before the day that is one year from the end of the taxation year, and without notice or demand,

- (a) file with the Minister
 - (i) a return for the taxation year, in prescribed form and containing prescribed information, and
 - (ii) both an information return and a public information return for the taxation year, each in the form prescribed for the purpose of subsection 149.1(14); and
- (b) estimate in the return referred to in subparagraph (a)(i) the amount of tax payable by the taxpayer under subsection 188(1.1) for the taxation year; and
- (c) pay to the Receiver General the amount of tax payable by the taxpayer under subsection 188(1.1) for the taxation year.

189 (6.2) Reduction of revocation tax liability

If the Minister has, during the one-year period beginning immediately after the end of a taxation year of a person, assessed the person in respect of the person's liability for tax under subsection 188(1.1) for that taxation year, has not after that period reassessed the tax liability of the person, and that liability exceeds \$1,000, that liability is, at any particular time, reduced by the total of

- (a) the amount, if any, by which
 - (i) the total of all amounts, each of which is an expenditure made by the charity, on charitable activities carried on by it, before the particular time and during the period (referred to in this subsection as the "post-assessment period") that begins immediately after a notice of the latest such assessment was sent and ends at the end of the one-year period

exceeds

- (ii) the income of the charity for the post-assessment period, including gifts received by the charity in that period from any source and any income that would be computed under section 3 if that period were a taxation year, and

- (b) all amounts, each of which is an amount, in respect of a property transferred by the charity before the particular time and during the post-assessment period to a person that was at the time of the transfer an eligible donee in respect of the charity, equal to the amount, if any, by which

the fair market value of the property, when transferred, exceeds the consideration given by the person for the transfer.

189 (6.3) Reduction of liability for penalties

If the Minister has assessed a particular person in respect of the particular person's liability for penalties under section 188.1 for a taxation year, and that liability exceeds \$1,000, that liability is, at any particular time, reduced by the total of all amounts, each of which is an amount, in respect of a property transferred by the particular person after the day on which the Minister first assessed that liability and before the particular time to another person that was at the time of the transfer an eligible donee described in paragraph 188(1.3)(a) in respect of the particular person, equal to the amount, if any, by which the fair market value of the property, when transferred, exceeds the total of

- (a) the consideration given by the other person for the transfer, and
- (b) the part of the amount in respect of the transfer that has resulted in a reduction of an amount otherwise payable under subsection 188(1.1).

189 (7) Minister may assess

Without limiting the authority of the Minister to revoke the registration of a registered charity or registered Canadian amateur athletic association, the Minister may also at any time assess a taxpayer in respect of any amount that a taxpayer is liable to pay under this Part.



May 14, 2019

Sheila Britton
Director
Homestead on the Hill Foundation
1250 – 1500 West Georgia St
Box 62
Vancouver, BC V6G 2Z6

BN: 80930 9479 RR0001
File: 3032109

Dear Sheila Britton:

Subject: Audit of Homestead on the Hill Foundation

This letter results from the audit of the Homestead on the Hill Foundation (the Organization) conducted by the Canada Revenue Agency (CRA). The audit related to the operations of the Organization for the period from November 1, 2015 to October 31, 2017.

On May 14, 2019, the Organization was advised that the CRA identified specific areas of non-compliance with the provisions of the Income Tax Act (the Act) and its Regulations in the following areas.

AREAS OF NON-COMPLIANCE		
	Issue	Reference
1.	Failure to devote resources to a charitable purpose	149.1(3), 168(1)(b)
2.	Providing an undue benefit to a person	188.1(4), 188.1(5)
3.	Failure to meet the disbursement quota	149.1(3)(b), 168(1)(b)

This letter describes the areas of non-compliance identified by the CRA relating to the legislative and common law requirements that apply to registered charities, and offers the Organization an opportunity to respond and present additional information. The Organization must comply with the law; if it does not, its registered status may be revoked in the manner described in section 168 of the Act.

Background

The Organization was registered as a public foundation under the fourth head of charity (benefits to the community in a way regarded as charitable at law) on January 1, 2006, with the following purposes:

"The purposes of the Foundation are:

- a) to solicit and receive gifts, bequests, trusts, funds and property and beneficially, or as a trustee or agent, to hold, invest, develop, manage, accumulate and administer funds and property for the purpose of distributing funds and property exclusively to registered charities and "qualified donees" under the provisions of the Income Tax Act; and
- b) to undertake activities ancillary and incidental to the attainment of the aforementioned charitable purposes."

The original directors resigned in January 2014 and were replaced with Erin Dexter, Sheila Britton and Michael Revitt.

Prior to the tenure of these directors the Organization was inactive. It was activated in November 29, 2013, with the contribution of two promissory notes from Global Charity Fund for a total value of \$3,500,000. This was followed by a January 15, 2014, contribution of 2,000,000 shares of Archon Minerals Ltd ("Archon") from Howe Sound Samaritans' Foundation for a total value of \$2,420,000.

Identified areas of non-compliance

1. Failure to devote resources to a charitable purpose

A charitable activity is one that directly furthers a charitable purpose - which requires a clear relationship and link between the activity and the purpose it purports to further. The Act permits public foundations to either make gifts to other organizations that are qualified donees or to carry on their own activities. In the case of making a gift, paragraph 149.1(3)(b.1) provides that a public foundation may be revoked if it makes a gift other than to a qualified donee or in the course of charitable activities carried on by it.

The Organization has made no gifts to qualified donees in the audit period, November 1, 2015 to October 31, 2017. In the two prior fiscal periods there was only a minimal gift of \$785. Overall, the Organization's activities in the audit period were minimal with the exception of an expenditure for legal fees in the amount of \$26,880. The legal costs were supported by invoice [REDACTED] issued in the name of the Organization, from [REDACTED] dated December 14, 2015. The invoice states:

"For professional services related to all dealings with Stu Blusson and transfer of income producing assets into Archon and issues related to enhancing the value of the Foundation's Archon Holdings."

At the request for further documentation, director Sheila Britton has explained that [REDACTED] was retained to plan and propose a plan to have Mr. Blusson sell his [REDACTED] interest in the core zone to Archon. The result would be to put the cashflow from the

core zone into Archon which would produce dividends and therefore increase the share price as well as liquidity.”

The description of the costs do not provide any insight as to how these costs are laid out for charitable activities, or how they are in support of the Organization's purpose. There is no direct connection between the Organization and the services provided. There is no explanation as to why the Organization was expected to pay for the costs.

We fail to see the public benefit flowing from the payment of these legal fees. Based on the information provided, these legal fees are the responsibility of Mr. Blusson and Archon Holdings Ltd (Archon).

It appears the Organization used its resources for the benefit of non-qualified donees (Archon and Mr. Blusson) by paying expenses that are not in support of its purposes and that provided no public benefit.

It is our position these outlays are neither a gift to a qualified donee, or a cost laid out in a charitable activity; consequently, the Foundation has contravened subsection 149.1(3)(b.1). We believe there is sufficient grounds to revoke the charitable status of the Foundation under paragraph 168(1)(b) of the Act.

2. Providing an undue benefit to a person

To be charitable at law a purpose must fall within a category of charity and deliver a public benefit. However, it is not enough that a purpose falls within one or more of the four categories of charity and delivers a charitable benefit to a properly defined eligible beneficiary group. The public requirement also means a charity may not provide private benefits as it advances and furthers a charitable purpose, except within legally acceptable boundaries.¹ Moreover, it is the charity's responsibility to establish that any private benefit that may be delivered is acceptable.

Generally, a private benefit is a benefit or advantage provided to a person or organization that is not a charitable beneficiary, or a benefit provided to a charitable beneficiary that exceeds the bounds of charity. An acceptable private benefit is one that is incidental to achieving a charitable purpose. A private benefit will usually be incidental where it is necessary, reasonable, and proportionate to the resulting public benefit².

Necessary essentially means legitimately and justifiably resulting from an action that directly contributes towards achieving a charitable purpose, or a required step in, or consequence or by-product of, an action taken only to achieve a charitable purpose.³

¹ *Prescient Foundation v MNR*, 2013 FCA 120 at para 36, [2013] FCJ no 512.

² For more information, see CRA Policy Statement CPS-024, Guidelines for Registering a Charity: Meeting the Public Benefit Test.

³ See for example *Incorporated Council of Law Reporting for England and Wales v AG*, [1972] Ch 73, [1971] 3 All ER 1029 (CA); *Royal College of Surgeons of England v National Provincial Bank*, [1952] AC

Reasonable means related to the need and no more necessary to achieve the purpose,⁴ and fair and rational. Proportionate to the resulting public benefit means a private benefit must be secondary and subsidiary to a charitable purpose.⁵ It cannot be a substantial part of a purpose, or form an additional or independent non-charitable end in and of itself. The public benefit cannot be too indirect, remote or speculative as compared to a more direct private benefit, particularly where the direct benefit is to private persons, entities or businesses.⁶

In certain circumstances, providing a private benefit may be considered the conferment of an undue benefit which is a sanctionable offence under subsection 188.1(4) of the Act.

188.1(4) Undue benefits

A registered charity or registered Canadian amateur athletic association that, at a particular time in a taxation year, confers on a person an undue benefit is liable to a penalty under this Part for the taxation year equal to

- (a) 105% of the amount of the benefit, except if the charity or association is liable under paragraph (b) for a penalty in respect of the benefit; or
- (b) if the Minister has, less than five years before the particular time, assessed a liability under paragraph (a) or this paragraph for a preceding taxation year of the charity or association and the undue benefit was conferred after that assessment, 110% of the amount of the benefit.

188.1(5) Meaning of undue benefits

For the purposes of this Part, an undue benefit conferred on a person (referred to in this Part as the "beneficiary") by a registered charity or registered Canadian amateur athletic association includes a disbursement by way of a gift or the amount of any part of the income, rights, property or resources of the charity or association that is paid, payable, assigned or otherwise made available for the personal benefit of any person who is a proprietor, member, shareholder, trustee or settlor of the charity or association, who has contributed or otherwise paid into the charity or association more than 50% of the capital of the charity or association, or who deals not at arm's length with such a person or with the charity or association, as well as any benefit conferred on a beneficiary by another

⁴ 631; Royal College of Nursing v St Marylebone Borough Council, [1959] 1 WLR 1007 (CA); IRC v Oldham Training and Enterprise Council, [1996] BTC 539.

⁵ See for example Joseph Rowntree Memorial Housing Association Ltd and Others v AG, [1983] Ch 159 (Ch D); In Re Resch's Will Trusts And Others v Perpetual Trustee Co Ltd, [1969] 1 AC 514 (PC).

⁶ Incorporated Council of Law Reporting for England and Wales v AG, [1972] Ch 73, [1971] 3 All ER 1029 (CA); Inland Revenue Commissioner v City of Glasgow Police Athletic Association, [1953] AC 380 (HL); IRC v Oldham Training and Enterprise Council, [1996] BTC 539.

⁶ See for example IRC v Oldham Training and Enterprise Council, [1996] BTC 539; Canterbury Development Corporation v Charities Commission, [2010] NZHC 331; Hadaway v Hadaway, [1954] 1 WLR 16 (PC); Re Co-operative College of Canada et al and Saskatchewan Human Rights Commission, [1975] 64 DLR (3d) 531.

person, at the direction or with the consent of the charity or association, that would, if it were not conferred on the beneficiary, be an amount in respect of which the charity or association would have a right, but does not include a disbursement or benefit to the extent that it is

- (a) an amount that is reasonable consideration or remuneration for property acquired by or services rendered to the charity or association;
- (b) a gift made, or a benefit conferred,
 - (i) in the case of a registered charity, in the course of a charitable act in the ordinary course of the charitable activities carried on by the charity, unless it can reasonably be considered that the eligibility of the beneficiary for the benefit relates solely to the relationship of the beneficiary to the charity, and
 - (ii) in the case of a registered Canadian amateur athletic association, in the ordinary course of promoting amateur athletics in Canada on a nationwide basis; or
- (c) a gift to a qualified donee.

At this time we believe the Organization used its resources for the benefit of multiple persons when, as per invoice [REDACTED] it paid \$24,000 for legal expenses that were incurred by Stewart Blusson and Archon Holdings Ltd⁷.

What is not clear is how this disbursement is related to the charitable activities of the Organization. The Organization has provided us with no indication of how the payment of these legal fees is a charitable activity in and of itself, nor has the Organization explained how the payment of these fees directly affects the value of its asset (i.e., the holdings in Archon Holdings Ltd.). Moreover, there is no explanation for why these legal fees should have even be paid by the Organization and not either Stewart Blusson or Archon Holdings Ltd (Archon).

As such, and in the absence of additional information, it is reasonable to consider the payment of the legal fees to be a gift from the Organization to Archon and Stewart Blusson. By considering the payment as a gift (to non-qualified donees) the payment of the legal fees meets two of the criteria of ss. 188.1(5) in that it was a disbursement by way of gift that was not incurred as part of the deliverance of charitable activities⁸, and that it was not a gift to a qualified donee⁹. Therefore, it is our opinion that by paying for the above mentioned legal expenses the Organization conferred an undue benefit on Stewart Blusson and Archon Holdings Ltd.

⁷ Neither Stewart Blusson nor Archon Holdings Ltd. are qualified donees.

⁸ Subparagraph 188.1(5)(b)(i) of the Act.

⁹ Paragraph 188.1(5)(c) of the Act.

Calculations of the Undue Benefit

For the fiscal period ended October 31, 2016

Undue benefits	\$24,000 ¹⁰
Penalty of 105%	<u>x 105%</u>
Total penalty	<u><u>\$25,200</u></u>

In conclusion, it is our position that the Organization has conferred undue benefits on Stewart Blusson and Archon Holdings Ltd. in the audit period and that these undue benefits are subject to sanctions under subsection 188.1(4) of the Act. However, please note that we are not proposing to apply these sanctions at this time due to our current proposal to revoke the charitable status of the Organization under paragraph 168(1)(b) of the Act¹¹. Nevertheless, please note that we maintain our right to consider the application of these sanctions depending on the nature of your response and representations to this letter. Details about the representation process are provided at the end of this letter.

3. Failure to meet the disbursement quota

The Act requires public foundations to make a minimal disbursement each year equal to the disbursement quota. The calculation of the disbursement quota is contained in subsection 149.1(1) of the Act.

Our review determined the Organization has made no gifts to qualified donees in the audit period, and only one minor gift in the two prior fiscal periods, resulting in a large, accumulating disbursement quota shortfall. For the four fiscal periods the total disbursement quota shortfall is approximately \$1.1 million.

As a result, the Organization has failed to comply with the disbursement quota requirements contained in the Act. Pursuant to subsection 149.1(3)(b) this is cause for the Organization to be revoked in the manner described in subsection 168(1) of the Act.

Ineligible Individuals

The Act provides CRA with the discretionary authority to suspend or revoke the registration of a registered charity where an ineligible individual is a director, trustee, officer or like official, or if such an individual controls or manages the charity directly or indirectly. As detailed below, it appears that a member of the Organization is an ineligible individual.

¹⁰ This amount is equal to the total of invoice [REDACTED] before taxes.

¹¹ Please see section the above section entitled "1. Failure to devote resources to a charitable purpose" for more information.

Legislation

The definition of "ineligible individual" at subsection 149.1(1) of the Act reads,

"Ineligible individual," at any time, means a person who has been

- (a) convicted of a relevant criminal offence unless it is a conviction for which
 - (i) a pardon has been granted and the pardon has not been revoked or ceased to have effect, or
 - (ii) a record suspension has been ordered under the Criminal Records Act and the record suspension has not been revoked or ceased to have effect,
- (b) convicted of a relevant offence in the five-year period preceding that time,
- (c) a director, trustee, officer or like official of a registered charity or a registered Canadian amateur athletic association during a period in which the charity or association engaged in conduct that can reasonably be considered to have constituted a serious breach of the requirements for registration under this Act and for which the registration of the charity or association was revoked in the five-year period preceding that time,
- (d) an individual who controlled or managed, directly or indirectly, in any manner whatever, a registered charity or a registered Canadian amateur athletic association during a period in which the charity or association engaged in conduct that can reasonably be considered to have constituted a serious breach of the requirements for registration under this Act and for which its registration was revoked in the five-year period preceding that time, or
- (e) a promoter in respect of a tax shelter that involved a registered charity or a registered Canadian amateur athletic association, the registration of which was revoked in the five-year period preceding that time for reasons that included or were related to participation in the tax shelter.

Under section 149.1 (4.1)(e) of the Act, the CRA may revoke the registration of a registered charity, if an ineligible individual is a director, trustee, officer or like official of the charity, or controls or manages the charity, directly or indirectly, in any manner whatever.

We have concerns with the Organization's member, Blake Bromley, who has been a member since January 30, 2014.

According to our records Mr. Bromley was previously listed among the directors and was a member of a charity named Theanon Charitable Foundation when its registration was

revoked on February 10, 2018, for serious breaches of the requirements for registration under the Act.

At this time, we would like the Foundation to note that Mr. Bromley meets the definition of ineligible individual, as described in paragraph (c) above.

The Organization's options:

a) Respond

If the Organization chooses to respond, send written representations and any additional information regarding the findings outlined above **within 30 days** from the date of this letter to the address below. After considering the response, the Director General of the Charities Directorate will decide on the appropriate course of action. The possible actions include:

- no compliance action;
- issuing an educational letter;
- resolving the issues through a Compliance Agreement;
- applying penalties or suspensions or both, as described in sections 188.1 and 188.2 of the Act; or
- issuing a notice of intention to revoke the registration of the Organization in the manner described in subsection 168(1) of the Act.

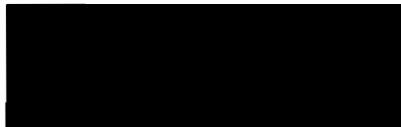
b) Do not respond

The Organization may choose not to respond. In that case, the Director General of the Charities Directorate may issue a notice of intention to revoke the registration of the Organization in the manner described in subsection 168(1) of the Act.

If the Organization appoints a third party to represent it in this matter, send us a written request with the individual's name, the individual's contact information, and explicit authorization that the individual can discuss the file with us.

If you have any questions or require further information or clarification, do not hesitate to contact me at the numbers indicated below. My team leader, Sherri Davis, is also available at (250) 363 3128.

Yours sincerely,



Maria Popova, [REDACTED]
Audit Division – Charities Directorate

Telephone: 250 - 363-8876
Toll Free: 1-855-522-7864
Facsimile: 250 - 363-3000
Address: c/o 9755 King George BLVD
Surrey, BC V3T 5E1

c.c.: Greg Sawers, [REDACTED]

